Supreme Court, U.S.
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No. 90-1758

In The

Supreme Court of the United States

October Term, 1990

BEST BUY WAREHOUSE,

Petitioner,

vs.

BEST BUY COMPANY, INC.,

Respondent.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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MEMORANDUM OPPOSING CERTIORARI

Respondent Best Buy Co., Inc. ("Respondent") respectfully requests this Court deny the Petition of Best Buy Warehouse ("Petitioner") for a Writ of Certiorari.

Petitioner's request to this Court for certiorari presents no special or important reasons as to why the writ should be granted.

Petitioner cannot successfully argue that the decision of the Court of Appeals conflicts with any decisions of other courts of appeal or of this Court. Indeed, Petitioner offers no authority for such a proposition. *See* Sup. Ct. R. 10.1(a).[1]

Nor can Petitioner successfully argue that the Seventh Amendment to the Constitution is in any way impacted by the summary judgment granted to Respondent.[2] The trial court and Court of Appeals determined that Petitioner did not come forward with evidence under Rule 56 of the Federal Rules of Civil Procedure to rebut

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[1] Notwithstanding Petitioner's unsupported claim that the Eighth Circuit Court has disregarded other circuits' views of genericism, no amount of acquired distinctiveness (secondary meaning) can convert a generic name into a trademark. *See Nat'l Conference of Bar Examiners v. Multi-State Legal Studies, Inc.*, 692 F.2d 478, 487 (7th Cir. 1982), *cert. denied, Multi-State Legal Studies, Inc. v. Ladd*, 464 U.S. 814, 104 S. Ct. 69, 78 L.Ed.2d 83 (1983); *C.E.S. Publishing Corp. v. St. Regis Publications, Inc.*, 531 F.2d 11, 13 (2d Cir. 1975).

[2] Petitioner has not previously argued or raised its argument regarding the Seventh Amendment to the Constitution.

the showing that the term "Best Buy" was generic and not capable of trademark protection.[3]

Finally, the Petition does not present any important, novel or unsettled question of law. *See* Sup. Ct. R. 10(c). As this Court has noted on other occasions:

> . . . It is very important that we be consistent in not granting the writ of certiorari except in cases involving principles, the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.

Layne & Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387, 393 (1923); *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 79 (1955). In short, Petitioner is simply asking this Court to disagree with the conclusions reached by the District Court and Court of Appeals after their review of the entire record.

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[3] Petitioner now argues that its case is not based on the trademark statutes of the United States. However, Petitioner, which is bound by its Complaint, specifically sought relief in its Complaint for alleged violation of its "trademark" under the trademark statutes of the United States. Petitioner has not previously raised such argument.

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Dated this 3rd day of June, 1991.

Respectfully submitted,

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